

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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PASSENGER MANIFEST INFORMATION
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_____) **Docket OST-95-950**

DATED: November 12, 1996

COMMENTS OF ALL NIPPON AIRWAYS CO., LTD.

On September 10, 1996 the Department of Transportation ("DOT" or the "Department") issued a Notice of Proposed Rulemaking in the above-referenced docket which, among other things, proposes rules which would require U.S. and foreign airlines with flight segments to or from the United States to provide the Department of State and the Department of Transportation with passenger manifests within one hour after an aviation accident to facilitate notification of next of kin. Under the proposed rule, foreign air carriers would be required to (1) collect the full name and passport number of each passenger who is a U.S. citizen or a lawful permanent resident of the United States (mandatory for boarding the flight); (2) for each U.S. citizen and lawful permanent resident of the U.S., solicit the name and telephone number of a person or entity to be contacted in the event of a disaster; and (3) maintain an

accurate record of the information collected, as well as a record of each passenger declining to provide an emergency contact. All Nippon Airways Co., Ltd. ("ANA"), pursuant to authority issued by DOT, operates scheduled air transportation services between points in Japan and points in the United States. ANA submits the following comments in response to the Notice of Proposed Rulemaking.

1. ANA believes the proposed regulations affecting foreign air carriers should be considered either on a multilateral basis, or through bilateral negotiations with the country of the affected foreign carrier. Through passenger manifest requirements, the Department attempts to regulate foreign air carriers and foreign air transportation. ANA believes such unilateral action by the Department is inconsistent with principles of international law. In addition, such action is in conflict with the Aviation Security Improvement Act, which commits the United States to achieve aviation security objectives through accepted channels of resolution, for instance, the International Civil Aviation Organization, or bilateral negotiation mechanisms.^{1/}

2. If issued in final form, compliance with the proposed regulations will create an unreasonable administrative and

^{1/} Pub. L. No. 101-604, 104 Stat. 3081 (codified as amended at 22 U.S.C. § 5501 (1990)).

economic burden on foreign airlines. Applying passenger manifest requirements to foreign air carriers will result in passenger service which is less efficient and of lower quality. Many foreign airport check-in counters and travel agencies lack computerized reservations systems sufficiently advanced to accommodate the gathering of additional passenger information. Thus, foreign air carriers will be forced to obtain the information prior to passenger boarding, which will be a very time-consuming process.

Using an estimate that it will take a minimum of 40 additional seconds, per passenger, to solicit and collect all passenger manifest information, this proposal could create an additional two to four hours of check-in time processing for a 360-seat airplane. At many foreign airports, it would be impossible for air carriers to expand counter space and employ more check-in personnel in order to maintain existing check-in times, resulting in individual passenger delays and increased airport congestion.

Information gathered pursuant to passenger manifest requirements must be kept a minimum of 24 hours after the completion or cancellation of the covered flight. A foreign airline would be required to transmit a complete and accurate compilation of information to the U.S. Department of Transportation and the U.S. Department of State within one hour

of an aviation disaster, or, even if this time deadline is not technologically feasible or reasonable, within a maximum of three hours after the carrier learns of the disaster. The limited technological resources of many foreign airlines, as well as inevitable problems with the language barrier, make these time frames ambitious, if not impossible to meet. As a result, even if foreign airlines and airports were able to accommodate the increased administrative burden, technical difficulties in communicating necessary information promptly and accurately may render manifest requirements ineffective in the event of a disaster.

The Department itself acknowledges that passenger manifest information requirements will be very costly to implement.^{2/} Complying with this proposal will place an even greater economic burden on foreign air carriers. In order to effectively comply with this proposal, foreign airlines will be forced to purchase new equipment and new computer programs, add airport counter space, and hire additional personnel. This represents an unnecessary increase to the ordinary costs of doing business.

3. Compliance with the proposed regulation will unduly sacrifice the privacy rights of passengers. Under the proposal, airlines are required to solicit the name and telephone number of

^{2/} 61 Fed. Reg. 47702 (1996).

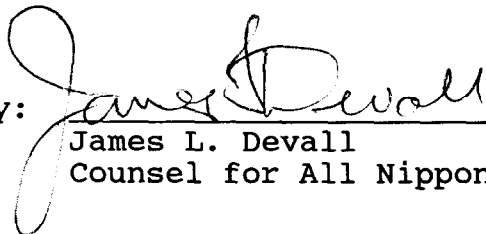
an emergency contact for each passenger who is a U.S. citizen or a U.S. lawful permanent resident. Such a proposal compromises the privacy interests of passengers who may be reluctant to reveal such information for fear that it will be turned over to the U.S. Department of State, the U.S. Department of Transportation, another government agency, or become available to a host of other persons.^{3/}

4. While ANA fully supports appropriate action to increase aviation security throughout the world, there is little relationship between the collection of passenger manifest information and enhanced aviation security. In addition, the regulation proposed by DOT will result in significant administrative burdens, substantial delays, and considerable costs. In light of the foregoing, DOT should consider the rules proposed in the Notice of Proposed Rulemaking only in the context of multilateral discussions on the subject, or through bilateral negotiations with the countries of the affected foreign air carriers. For all of these reasons, ANA urges that the proposed passenger manifest requirements not be applied to foreign air carriers.

^{3/} In light of the fact that all passenger manifest information may be provided for use in the Advance Passenger Information System (APIS), or, to other U.S. or foreign governmental entities as authorized by the Department of Transportation, the unnecessary disclosure of personal information is very possible.

Respectfully submitted,

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Dated: November 12, 1996